643 kann, und Herr sogar des Eigentums seiner Unter-
114 tanen'.[1] These statements would seem to require
642 some modification. As Mr Pumphrey has pointed
[177] out, it is unlikely that the so-called 'provinces' were in fact more than districts or that they were in any sense administrative departments before they were made into something of the kind by foreign governments.[2] Moreover, though doubtless the king exercised considerable influence in the country and may have confirmed settlement chiefs in office, he did not nominate them. They were heads of settlements in virtue of their position as heads of lineages dominant in those settlements and although they had certain duties to the king it is, I think, wrong to describe them as being in any sense administrative officials. To use such terms as 'state', 'government', and 'administration' in speaking of the Shilluk political system would appear to me, in the light of what is now known of it, to be a mistake.

643 It is true that the more recent authorities imply
114 rather than explicitly state what in their opinion
●692 is the position of the king. Mr Howell and Mr Thomson speak of 'the theoretical omnipotence' of the king and of a 'theoretically omnipotent

[1] *Op. cit.* pp. 150–1.
[2] *Op. cit.* pp. 18–19.

2:Seligman & Seligman E-5 (1909-1910) 1932
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643 but others should crouch with head turned over the right shoulder,
644 and perhaps with one hand shading the face. Aker, widow of two kings and one of our best informants, used to delight to mimic the respectful manner in which she would serve the king, presenting food on her knees with head averted, and then move away kneeling to crouch with averted face while the king was eating, her garment being held to her side by her elbow; after the king had eaten she would pour water on his hands, still with averted face.

643 Disputes may be settled by the local or district chiefs, but an appeal to the king is always possible. District and village chiefs are assisted
[692] by the local elders in the administration of justice. The method
[651] of raising the tribute to the king has not been investigated, but examples in the following pages (confirmed by Westermann's account) will show that certain clans owed special duties to the king; indeed, anyone killing a leopard must send its skin to the royal household, while the *gyek* antelope is specially hunted to obtain skins for the king. As the fountain of justice, the king kept for himself by far the greater part
643 of the fines for homicide and other grave offences. The fine for
681 man-killing was usually ten head of cattle, but sometimes more was levied; a girl might be taken in lieu of the cattle, when the king would allow the girl to marry but would keep the bride-wealth; or a girl and boy might be kept as hostages by the king until the cattle were paid. The king might give one or two head of cattle to the family of the deceased as compensation; this, however, did
[628] not always settle the matter, and a blood feud might start and be continued until the balance of dead was even, often not only families but whole villages becoming involved.

635 Hofmayr, quoting Father Banholzer, describes the investiture of
577 a high chief of one of the ten main provinces.[1] It is obvious that his functions are regarded as more than merely administrative, and that his correct ethical behaviour is almost the main concern of the old man—one of his future sub-chiefs—who, clasping his feet, recites the duties of his new office. He should let no stranger go hungry, he should use no abusive language, but be just and leave the houses and women of his underlings alone. The new high-chief takes oath to observe these duties, in token of which he licks the blade of a spear, presses it to his forehead, and then waves it over the ox he sacrifices. He remains in seclusion in his hut for four days;

[1] Op. cit., 151. These great district chiefs are known as *Jang Duong*. This is not a technical but rather a courtesy title, lit. "big chief". All chiefs are *ago*.

2:Seligman & Seligman E-5 (1909-1910) 1932
FJ23 Shilluk FJ23

778 346 gourds, seven articles described as plates—white and red, two very large—seven similar but smaller articles, copper cooking vessels, many Shilluk clay pots, and four elephant tusks; sacred water is also kept here. This is the hut which Nyakang himself is thought to visit at [776] night, arriving as a wind; music heard coming from the hut as he plays his lyre (*thom*) is taken as evidence of his presence, and the feeling that he still protects his people is vastly strengthened by these visits. This hut was said to be built by the chief of the Nyelwal sub-district in which is Fenikang.

Wed Mac contains the cooking pots of Nyakang, and here fire is made and food cooked.

Dag, or Kwayo, represents the hut in which Dag slept.

Duwol—also called Nyakang—was the hut before which Nyakang [692] heard disputes, and the *reth* still sits in front of it and hears cases when he visits Fenikang. Mr. Heasty was told that the small children of the village might sleep in this hut when mosquitoes were bad, and at Fenikang it was said that four tusks were kept here.

The *ludi* is stated to be a place for the king, where he may urinate and perhaps bathe.

782 796 The worship of Nyakang at Fenikang and his other shrines consists of a solemn ritual of sacrifice and prayer. We know of the following occasions for ceremonial worship; no doubt there are others of which we did not hear, and we do not doubt that sacrifice would be made in any threat of national danger or disaster. We give in brief outline accounts of the two most important annual ceremonies:—

[805] 1. The rain-making ceremony held before the rains at the beginning of the month *alabor*, at the new moon (the Shilluk calendar is lunar).

2. The harvest festival held when the millet is cut, i.e. about the end of the rains.

At the rain ceremony a cow and a bullock are given to Nyakang, the latter being killed and the former added to the herd belonging [643] to the shrine. Both should be given by the king, who at the Fashoda shrine himself takes part in the ceremony. The bullock is slain with a sacred spear by one of the *bareth* before the door of the shrine enclosure, while the king stands near the beast praying loudly to Nyakang for rain and holding a spear pointing upwards. After the meat has been eaten by all the *bareth*, the bones and as much blood as can be collected in a gourd are thrown into the river, and the skin is made into a mat for Nyakang. Much of the millet preserved in

3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

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and everything he possessed became the property of the king.

DIVISION OF THE COUNTRY

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The country is divided into 63 districts (vide page 127), every one of which is presided by a district chief; each village again has its own chief. The district and village chiefs are appointed and may be deposed by the king. Quarrels and law-suits may be judged by the local or district chief, but an appeal to the king is always possible. Common affairs of a village and minor judicial cases are judged by the local chief together with the old men of the village. They sit on such occasions in a circle in the village yard, in the shade of a tree, if there is one. If the meeting is secret, or if the weather is bad, they assemble in the cow-house.

VI. ETHNICAL COMPONENTS OF THE SHILLUK PEOPLE.

174

EARLY INHABITANTS OF THE COUNTRY

When Nyikang arrived in what is now the Shilluk country, the latter was inhabited by other tribes, who probably were partly of dark, and partly of fair colour. These inhabitants were either expelled or subdued and then incorporated into the Shilluk nation. This process is clearly reflected in the traditions. Among others Nyikang found the "red strangers" in the country, which he either defeated and made them tributary, or drove out of their residences (vide page 163 ff). These "red strangers" seem to be Arabs. But apart from them the traditions speak of fabulous beings who were partly man and partly animal; Nyikang fought with them, and when defeated, transformed them into real men and settled them in villages. They are probably the original negro inhabitants of the present Shilluk country, who up to this day form the essential part of the Shilluk people, a discrimination being made between them and the "people of Nyikang."

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SOCIAL ORGANISATION

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The latter form, so to say, a nobility. The first in rank is the royal family and all members of it, that is all persons who can claim descendency from Nyikang. The male members of the royal family bear the title *Kwɔ ríŋ* "descendant of the king", and are shown special deference. In several of the historical traditions the king or the royal family expressly distinguish themselves from the common Shilluks; in these connections the name "Shilluk" is even used in an abusive way: "merely a Shilluk", vide page 233. Probably the name of the Shilluks *cʰɔ̄lo* means "black"; in some nearly related languages the word has this meaning. This makes it probable that Nyikang and his people, or, the members of the royal family, were originally of lighter colour, as only this would give them a reason for calling the population they found inhabiting the country, "blacks".

A certain man, a prince, whose name was Buk Dō Jǫk Buin Dānyimǫ, carried on a law-suit. Buk was a good man; he had a slave, whose name was Oshangǫ. He carried on the law-suit with Ayīk, in the court of king Nyakwachǫ. And his servant ran in front of him (or: came instead of him, viz. of his master), and was stabbed by Ayīk with a spear, so that he died. (As a punishment for this misdeed) the village Ogwǭrǫ (which was the village of Ayīk) was destroyed by the king; the children (of the village, or of Ayīk) were caught, and Ayīk was brought (banished) to Detang.

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33. A killed Crocodile is the Property of the Magistrate.

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Kɛ́ɲ́ mak nam, ka tɛ̄rǫ kɛ̨dǫ[1], *ka tɛ̄rǫ nīnị gɛ̨t, ka bǫ́i mɛ̀n pɛ́ɲ́, ka rech e bɛ̄nǫ, ka bǫ́i mɛ̄gɛ̨o kị rech, ka jɛ̄ ṭɛ̨dǫ, ka jɛ̄ chāmǫ. Ka wǫu rū, ka maye bɛ̄nǫ, ka tɛ̄rǫ mɛ̄gɛ̨ǫ, ka ɲáɲ́ ka kɛ̨l, ka e makǫ kị ɖāṇ. Ka tɛ̄rǫ rɛ́ɲa wǫk, ka tyɛ́ɲ́ tɛ̨k e dɛ̄ɲ́ǫ, ka ɖāṇ kɛ̨l gɛ wǫk, ka ɲáɲ́ nɛ́ké. Ka tɛ̄rǫ ká wǫk, ka jāke bɛ̄nǫ, ka gɛ pɛ̄chǫ: ɲáɲ́ a gwɔ̄k edi? Kịne: e nɛ̨k! Kịne: dɛ ɛ ya kɛ́ɲ́? Kịne: nut. Yech! Ka yech. Ka e ko: ɲǫ́lé, bā gik lɛ̨gɛ̨. Ka kịɛ pach lɛ̨gɛ̨, ka tɛ̄rǫ bɛ̄nǫ chɛ̄, ka ɲáɲ́ ṭɛ̨l yi jāgɛ̨ǫ, ɲáɲe lɛ̨gɛ̨. Ka e chwɔ̄tǫ jɛ̄, ka jāk dwai, ka e chām; tɛ̄rǫ ko: ɔ̄, ɲáɲ́ an dɛ̄ch. Ḏụkị mɛ̨kǫ ka ɲáɲ́ mɛ̨kǫ kwáɲ́, ka chām yi tɛ̄re yau.

Ka jāgɛ̨ǫ e chwɔ̄tǫ, ka tɛ̄rǫ bɛ̄nǫ, ka e pɛ̄chǫ kịne: wuna yik jɛ̨k, ya peɲa gịche mɛ̨kǫ, ɛnd kwāɲu kị yey nam kâ; kịne: á gin áɲ̀ǫ? Ya peɲa kwǫ́l. Kịne: ɛ́, kúchè wǫ́n! Kịne: ɛ́, faṭe ɲáɲ́ a chām kị pay ɲate? Kịne: ɛ̂, e chāmǫ, ɲwǫle ɲáɲ́ ṭɛ̨pɛ̨. Kịne: ɛ́, chɔ̂lá! Ka e kyɛdǫ, kịne: ya ba chudǫ. Kịne: ɛ̂, wa kā Bachōdǫ. Kịne: ɛ̂, wa kɛ̨dǫ.

Ka gɛ kɛ̨dǫ, ka gɛ wiṭa Bachōdǫ, ká gɛ̀ gɔ̀ɲ̀ǫ, kịne: wuo (wuɛ), yá ɖálè yị kwǫ́p kwǫfe ɲate; kwǫ́l a chámè ɛ́n, kwǫl lɛ̨gɛ̨. Kịne: ɛ̀, yi chama ɲǫ, ɲate? Kịne: wuo, kúchè yán. Rịṭ e ko: ɛrɛ (ɣɛ́dɛ́), kɛ̨t chōl kị ɖǫk gá pyàrǫ, kị ɖāṇ! Ka e bɛ̄nǫ, ka e chudǫ ɖǫk gá pyàrǫ, kị ɖāṇ; ka gɛ kǫ́l kōle rịṭ, y tɛ̄re lɪ́ɲe[2], *ka gɛ rūmǫ.*

539* [526] 622 687

It was at the time when the river was barred (shut up for fishing), and the people slept on the river bank, and the net was sunk down on the bottom of the river, and the fish came, and the net caught fish, and the people cooked and ate them. And when it grew morning, the fishermen came, and the people went fishing again, then a crocodile was speared, and it seized a man; the people became afraid, and ran away, but those among them who were brave, remained; they brought the man who had been bitten by the crocodile out on the river bank. Then they killed the crocodile, and went out of the river (taking the crocodile with them). The chiefs came, and asked, "What about the crocodile?" They answered, "It is killed." They asked again, "But where is it?" Answer, "It is still here." The chiefs said, "Skin it!" And it was

[1] "When the river was caught, and the people went".
[2] that the people might hear.

3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

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king (Tugo) had finished his reign, he said, "My son shall be elected!" And he was elected.

35. A Law-suit about Dowry.

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Kɛ́ɲ kɛ̱t jɛ̄ bɛ̱ pídǫ̱, ka jɛ̄ kɛ́dǫ̱, ka jɛ̄ pɛ̱́ka peɲ. Ka pān ɛ́ni chǫ́ɲ, ka ɖāp u[1] pɛ̱́chǫ̱, kine: yā̱ pídǫ̱ káché jám! Kine: káchè jam kúchè yán![2] Kine: yi nūtí kɔ̄pǫ̱? Kine: yi mɛn an? Kine: yi wóu. Kɛ́ye ɣɔ̱t kúchè yán! Kine: kipaŋǫ̱ kuche yin? Kine: jal tɔ̱ɲ amɛn? Kine: jal tɔ̱ɲ ŋate. Kine: kwâɲ jâm! Ka jame kwân. A, ŋate, yi re a pɛ̱́m? ɖɔ̱k pate dyer? Ka jɛ̄ kɛ̱ti bɛ̱ gɔ́ɲ. Ka jɛ̄ kɛ́dǫ̱, ka rit e yɔ̄t, ka gɔ́ɲ gɔ́ɲ kine: wuo, wǫ chāti ká ńál àn. Kine: wu kɔma kwɔ̱f aŋǫ̱? Wǫ kɔma kwɔ̱fe ɖɔ̱k. Atɔ́, gɔ̄ŋun! Kine: ɛ̂, wuo, wɔ́ bì, cha wǫ pyɛ́jé ɛ́n ki kwɔ̱fe ɖɔ̱k, dɛ̱ é kyɛ̱t, cha ɖɔ̱k kújɛ̱. A chǫ́ŋà jɛ̀, a chǫ́ɲ jɛ̀, a kɔ́mà kwɔ́p, a kwāɲ jam, ka ɖɔ̱k pɛ̱́ka káché gɛ́n. Ka jɛ̄ yɛ̄yǫ̱, jɔ̀k dɔ̱ɲ; dɛ̱ chaka kɛ̱r yau. É, arɛ̱ lɔ̄ńé gɔ́ɲ. Kine: wa tɔu ya tɛ̱n; dɛ̱ ɖɔ̱k kache gɛ́n kújà, dɛ̱ nūtí kɔ̄bɨ̱. Kɛ́ɲ ɛ́ní ànàn, a bāɲ kyɛ́dá. Ka rit e lɔ̱kǫ̱ chyɛ̄, kine: ɣɔ̱, kinau, yi ba wéí jàl a kɛ̱r! yi re kɛ́re ɖɔ̱k tɛ̱rǫ̱? Kwɔ́fí rach! kɛ̱t, chúdí ki ɖāp! jal, ka yú[3] múch ki ɖɔ̱k abich. Ka e mūjǫ̱ ki ɖāp, ka gǫ kɛ̱lé, ka tyɛɲ pān ɛni chǫ́ɲ, kine: yá chúdì ki ɖāp, kɛ́ɲ ɛni anan. Dɔ̱ch! A kɛ́ɖɛ́, a tyɛni mɔgǫ̱, a chwɔl tyɛɲ ɛni, a bɛ̱n, a tyêre ɖāp tɛ̱rɛ̀ gɛ́n. Ka gɛ yēi chyɛ̱, kine: dɔ̱ch, wú bà wàt. A kɛ̱t gɛ́n, a kɔ̄l ɖɔ̱k, ka ɖāp mɛ̱kè gɛ́n.

At a certain time the people went to ask for indemnities, they went to the village (where the debtor lived), and sat down. The people of the village assembled. When the man began to ask, "I want indemnities for certain goods," the debtor replied, "I do not know anything about goods (which I owe you.)" The man asked, "Have you not been told?" He replied, "By whom?" The man said, "By your father." The debtor said again, "I do not know of anything concerning debts." The man said, "Why do you not know it?" Then it was asked, "Who is the judge?" The answer was, "That man is judge." He said, "Count the goods (which you claim from this man)." All the goods were enumerated. The judge said tho the debtor, "Man, why do you deny? Is it not true what he said?" And the people went to bring the matter before the king. They found the king, and the matter was told. They said, "Our lord, we have come with this man." The king asked, "What a palaver do you have?" They answered, "We have a palaver about cattle." "Well," said the king, "tell me!" The accuser said, "Well, our lord, we came to ask him (the debtor) about the matter of the cattle; but he refused; he said, he did not know anything about cattle. So I assembled the people, and when the people were assembled, I talked to him, and enumerated the goods, and the cows (which I said he owed me) were found right; the people consented (to my statement), the old people. He refused again to acknowledge it." After

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[1] u is here conditional: "when".
[2] "the place, i. e. the matter, of goods is not known by me".
[3] < yí ú "you will".

3:Westermann E-5 (1910) 1912 FJ23 Shilluk FJ23

that the king said (turning to the accused one), "Well, now you also tell your talk!" He said, "My father died while I was a little child; but the cows, I do not know anything about them. I was not told; that is the reason, therefore I refused to give them." Then the king gave his judgment thus, "Well, so it is, you are a man who refused (to give what is due); why did you refuse to give the people their cows? Your matter is bad. Go, and pay a girl as amends, and you (turning to the accuser), man, give him five cows!" The debtor gave the girl, he brought her to the village (of the accuser). When the people of the village had assembled, he (the accuser) said, "I have been indemnified with a girl; thus is the matter now." The people say, "All right." Then he goes to strain beer; and he calls the people. They come; he presents the girl to the people to be examined (whether it is a sufficient pay). And they consent, saying, "Very well, we are friends now."

They go away, the cows are brought, and the girl is recognised by them.

[A man has married somebody's daughter; after some time the girl, his wife, dies; now the father of the girl has to return part of the dowry which has been paid to him for his daughter. But in the meantime the father of the deceased wife has died too, and his eldest son has become his heir. The husband of the dead wife goes to this man, the brother of his dead wife, and wants his cattle back. But this man denies knowing anything about the matter, pretending his father did not tell him before his death. They therefore go before the king, who decides: the heir has to give his brother-in- law another girl instead of the deceased one; and in return the brother-in-law is to give the heir five five head of cattle, which is about half the usual price for a wife.]

LEGAL PROCEDURE

671 According to Hofmayr, Shilluk law "...is a law of tradition based on decisions of Nyikang and of previous kings."(1) He maintains that justice is very arbitrary and depends much on individual interpretation and custom. The settlement chief has a court to which are brought cases which the *gol* ●672 leaders and the hamlet headmen feel unable to settle or which are too serious for them to judge. The accuser and accused appear before the settlement chief and the headman is often called as witness, while the elders assist. In major disputes, or if the settlement chief's decision is appealed against, the matter is brought before the *reth*. Hofmayr further states that important cases are treated by him and his judgement is final.(2)

681 In the courts compensation is awarded for homicide and fines in cattle or goats, according to the seriousness of the offence, are imposed for disputing the *reth*'s judgement, refusing to pay royal tribute, wounding a royal prince or princess, for theft, robbery and sexual offences. Apart from minor offences it would appear that offenders were brought to court and tried, not so much for private wrongs as for public delicts or crimes coming under the general category of breaking the *reth*'s peace, disputing the *reth*'s judgement, breaking the *reth*'s and Nyikang's laws.

643 Information suggests that in practice in the past the *reth*'s judicial
682 authority was by no means undisputed. Hofmayr maintains that an order or
[676] judgement of the *reth*'s court was executed by the *reth*'s bodyguard, which consisted of a number of youths who followed the king everywhere. Accord-
[627] ing to the same authority "blood revenge is well known among the Shilluk and feuds do exist between persons, between families and also between villages."(3) The fine for homicide is 10 head of cattle; formerly a
[682] girl was taken instead of cattle. According to both Seligman and Hofmayr, the *reth* kept the cattle but might give two or three cows to the family of the deceased as compensation. This practice is comparable to similar legal procedures in communities in which feuds still flourish and the central authority does not exercise very extensive political powers.

628 Intervention in a serious feud between two districts probably took the
643 form of the *reth* supporting one side against the other, and self-help,
692 sometimes back by the *reth*'s intervention, was possibly the means of obtaining compensation and settling disputes which were not willingly submitted by the two quarrelling parties to arbitration and the judgement of a court. On the other hand, a description of the settlement of a feud by Oyler suggests that the role of the *reth* is essentially that of peacemaker, but that his functions can only be exercised if the disputants are willing to make peace.(4) In this respect it would appear that the role of the *reth* is
[171] comparable to that of other ritual and peacemaking functionaries among the Nilotes, such as the leopard-skin chief of the Nuer and the Dinka spear-chiefs.

(1) Hofmayr, *Die Schilluk*, 1925, p.157.
(2) *Ibid.*
(3) *Ibid.*, p.162.
(4) Oyler, *S.N.R.* 1920, Vol.III, No.3, pp.296-99.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

OBSERVATIONS ON THE SHILLUK OF THE UPPER NILE

CUSTOMARY LAW: MARRIAGE AND THE VIOLATION OF RIGHTS IN WOMEN

P. P. HOWELL

IN a previous article on the Shilluk[1] I discussed the laws of homicide and the legal and ritual functions of the *reth* or King. An interpretation of Shilluk law and authority is not easy because, apart from early contacts with the peoples of the northern Sudan, they have been subjected to external influences and some kind of Government since the early years of the last century. These contacts began with cursory and not altogether happy encounters with the Turco-Egyptian Government which were followed by the establishment of a provincial headquarters at Kodok in 1867 under the authority of a *mudir*; later came the turbulent and dismal years of the *Mahdia* and finally the occupation by the present Government in 1898. It would be idle to suppose that the political system of the Shilluk has remained unaffected by these influences. The Shilluk are by reputation an exceptionally conservative people and certainly the effects of their relations with outsiders are, to the casual observer, hard to detect. Profound changes have taken place none the less, especially in the sphere of customary law, and these changes are undoubtedly gathering momentum.

By 'law' I mean simply those customary rules governing human relationships from which there has developed a body of rules classed as 'customary law' (sometimes 'native law and custom') administered under the Chiefs' Court Ordinance of 1931, and more or less consistently applied in the tribunals established by the Government.

These courts have now largely taken the place of the ultimate sanction for conformity with accepted rules of conduct, for the fulfilment of recognized duties and the composition of all disputes, which was formerly the resort to force by the injured party and his supporters. It is my opinion that the ordered indigenous administrative system of the Shilluk, so enthusiastically described by some writers, and the organized repressive measures alleged to have been undertaken by the *reth*, are not only exaggerated, but also, in part, derive from contacts with alien governments. At any rate it is more than probable that no system existed among the Shilluk whereby all wrongs were righted by the direct intervention of the *reth* and his representatives.

We are not here concerned with political systems, but with the nature of customary law as it is applied today. This law is at basis derived from customary procedures in which arbitration and compromise prevailed; but in recent years it has acquired a consistency, and in some cases a rigidity, probably unknown in the past. A body of case law has arisen from precedents made in the courts, and although some laws may derive from the direct intervention of the Administration, others are part of a purely spontaneous process. It is also noticeable that many claims now upheld

[1] 'Observations on the Shilluk of the Upper Nile: The laws of homicide and the legal functions of the *reth*.' *Africa*, xxii. 2, 1952. I am again indebted to the Sudan Government for permission to quote from official reports and to Mr. W. P. G. Thomson and Mr. J. L. Baker for comments and suggestions.

9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

traditional divisions of Shilluk country. From the early years of administration, with frequent minor adjustments, until 1949 these divisions were eleven in number,[1] but they were recently amalgamated to form five.

These historical factors have been summarized here to show how difficult it is to formulate definite conclusions on the *reth*'s political authority. According to tradition and to what the Shilluk will often themselves say, he has absolute powers of intervention to suppress public disturbances, to give judgement in certain disputes and, moreover, to execute those judgements. In fact, in recent years, and possibly at times during the latter half of the nineteenth century, this theoretical authority has had the backing of an alien government and may for this reason have been exaggerated beyond what was actually enforceable in earlier times. There is, therefore, throughout Shilluk history in the last hundred years a divergence of theory and fact, and one does not know how much of the theory has been created by external influences. It will be realized that this problem is also of some importance in a theoretical study of primitive legal systems, for we wish to know whether the laws were, in fact, enforceable, whether the Shilluk monarchy, apart from external influences, represents ' politically organized society ', and whether certain laws were enforced and legal sanctions applied in such a manner as to justify the use of the term ' public law '.

There is little evidence of legal procedures during the Turkish régime and none during the *Mahdia*. Schweinfurth writing, in 1868, a lucid account of a Shilluk dispute heard by the Turkish 'Mudir' or Governor at Fashoda, says: ' He (the Mudir) was continually being called upon to adjust the disputes of natives, who appealed to his judgement even in their most private concerns. . . .' After describing the unsuccessful plea of a Shilluk girl for permission to marry her lover who had not enough cattle to pay the bridewealth, he adds, ' This was not a very comforting decision, but it showed me plainly how that it was ever his rule to recognize the customs of the country'.[2] Schweinfurth also gives a vivid picture of the Shilluk king at this period.

> In the Mudir's verandah I also made acquaintance with a Shillook chief, who had entirely surrendered to the Egyptian Government, and was now, as the Governor expressed himself, ' coming to his senses.' There was no external indication whatever of his rank. . . . He retained now but a shadow of his former power; his better days were gone, days in which, attended by a council of ancestral state, he had swayed the sceptre of patriarchal dignity. Of all the negro races which occupy the entire district of the Nile, the Shillooks used to uphold the most perfectly regulated government. . . . But now this condition is all changed, and everything has disappeared which gave this independent and primitive people their most striking characteristics.[3]

There are, of course, other references to the indigenous administration of the Shilluk based on the division of the country into provinces and settlements with a representative of the *reth* in charge of each, and the *reth* himself as the ultimate authority. Many writers therefore assume that there existed a highly organized system; more highly organized than the evidence warrants. It is natural that the present

[1] See Howell and Thomson, op. cit., p. 6.

[2] Schweinfurth, G., *The Heart of Africa*, London, 1878.

[3] Schweinfurth, op. cit., p. 19. He is here referring to the Turkish puppet Ajang wad Nyidhok. He mentions later that 'Kasgar' (presumably Kwathker), another descendant of the ancient reigning family, still maintained himself as an 'uncontrolled sovereign' in the southern part of the Shilluk country.

9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

Government, with periodic modifications, has utilized existing divisions of the country as administrative units, and has drawn its agents from the dominant lineages of each, thus creating a hierarchy of chiefs responsible to the *reth* himself; but this is not necessarily evidence that such a system was a reality in the past. On this subject Pumphrey expresses the opinion that, 'The power of the *Reths* before the Turkish interference was undoubtedly great. It was based partly on the semi-divinity with which tribal tradition clothes them and partly upon their great wealth in cattle and slaves. Justice was probably rough and large-scale fighting more prevalent than litigation, such law-suits as there were being seen, as previously mentioned, either by the settlement chief or by the *Reth* at Fashoda.' He adds in a footnote that 'The *Reth* is said to have had the enviable privilege of killing a tiresome litigant with a club.'[1] In an unpublished record Pumphrey goes farther than this and says:

I do not think it is true to say that as far back as Shilluk tradition goes, there is a system of administration and Courts with the *reth* at the head of it and powers descending through the heads of provinces, whom we call Court Chiefs, to heads of sections down to the village headman. . . . Naturally as one Chief or another attained to local prestige, he would tend to attract cases to him, and certainly for a period the princesses of Dettim used to see local cases. There were, however, only four regular offices under the *reth*. The Chiefs of Luak and Gerr lived on either side of Fashoda and were his right-hand men. The Chiefs of Muomo and Tonga were chiefs of the marches whose definite job it was to keep a look out for invading enemies. Apart from this, however, the Chiefs of the marches were also the *reth*'s representatives in the two extremes of the country and used both to see cases themselves and send along to Fashoda those cases which they thought the *reth* should see. Beneath these four officials were the Chiefs (*jyak*) i.e. holders of the *lau*.[2] Our present 'Section Chiefs' are only *some* of them *lau* holders, for the reason that 'sections' (occasionally somewhat arbitrarily formed) contain usually several original villages and each village has a *lau* (by an 'original village' I mean the parent village of a group of off-shoots of villages). It was through these *jyak* and through these four senior officials that the Shilluk country used to be ruled. The *reth* did not tour much, but had the people sent to him at Fashoda. If a killing occurred, the offending lineage would have to produce a girl and a boy. The girl would be handed to the brother (or near relative) of the dead man and the boy would go to be slave to the *reth*. If the case was not settled, or if one village went to fight with another one without sufficient cause, the *reth* would send his army (*tick*) to take all the cattle from the offending village, or, if necessary burn their villages. This army would consist of one or more of the adjacent villages, its strength depending on the amount of potential resistance. Any number of sections could be raised and it seems that the sections so instructed were glad to go, since the *reth*'s army was seldom, if ever, opposed and consequently there was little bloodshed, but a certain amount of booty.[3]

Pumphrey's opinions may seem somewhat contradictory, but it is clear that he thinks there was no highly efficient State system with an all-powerful *reth* at the head.

Evans-Pritchard points out that:

it is unlikely that the so-called 'provinces' were in fact more than districts or that they were in any sense administrative departments before they were made into something of the kind by foreign governments. Moreover, though doubtless the king exercised considerable influence in the country and may have confirmed-settlement chiefs in office, he did not

[1] Pumphrey, op. cit., p. 19.
[2] *Lau*, robe of office given by the *reth*.
[3] Pumphrey: Unpublished records. Undated: *circa* 1936.

9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

described as feuds, for they amount to civil war; the latter are usually so quickly composed that the feud is soon over. The ultimate aim of the first is successful deposition of the monarch by one side or his retention by the other, and there is evidence of a traditional, almost institutionalized, opposition between the north and south.[1] In the latter form of hostilities the desire for peaceful composition after an outbreak of violence or an act of homicide was presumably fostered by expediency, for within so compact and densely populated a territorial unit the continuance of a feud would be intolerable.[2] Local lineages within a settlement are sufficiently united by common interests in economic activities, by marital ties, and above all in common defence against aggression from other settlements, that these sanctions were, and indeed still are, particularly effective. These distinctions are important, for not only are feuds between adjacent settlements often fiercely sustained, as we have seen, but it is at this level of internal disruption that the intervention of the *reth* is most obvious, if we are to accept the evidence of recorded instances. This is true whether we take the view that in the past, before Government influences were effective, the king's intervention took the form of arbitration demanded by the participants, or whether we take the opposite view that he took repressive or even legal action as the head of an organized State.

In the case of civil war over the tenure of the monarchy itself, the *reth* was the leading participant defending his personal position against a rival. Action against him was *ultra vires*, though this was no longer true as soon as his rival was established on the throne. In the case of hostilities within a settlement, the sanctions were probably sufficiently forceful to secure amicable composition without either external arbitration or repression. We must, therefore, consider homicide in the context of inter-settlement feuds in which, as we shall see, the *reth* was more particularly involved in the rôle of peacemaker. It will then be necessary to consider the more individual aspects of the laws of homicide.

The Reth's *Rôle in the Composition of Inter-settlement Feuds*

On this subject the Seligmans say:

> As the fountain of justice, the king kept for himself by far the greater part of the fines for homicide and other grave offences. The fine for man-killing was usually ten head of cattle, but sometimes more was levied; a girl might be taken in lieu of the cattle, when the king would allow the girl to marry, but would keep the bridewealth; or a girl and a boy might be kept as hostages by the king until the cattle were paid. The king might give one head of cattle to the family of the deceased as compensation; this, however, did not always settle the matter, and a blood feud might start and be continued until the balance of dead was even, often not only families but whole villages becoming involved.[3]

the Ngork Dinka at any rate are in this respect closer to the Shilluk than to the Nuer.

[1] See Evans-Pritchard, *op. cit.*, p. 29.

[2] Latent hostility between kinship groups *within* a settlement sometimes prevailed. I recently drove with the *jago* of Ogod *Par* from his home in the extreme south of that settlement to his northern boundaries. He insisted that I should drive him back, presumably because he preferred the comfort of a motor-car to his own feet, but he gave as a reason that his people were at feud with the *Kwa* Oman lineage lying just to the north of his own village (an act of homicide had occurred two years before). It may be noted, however, that the villages of these *Kwa* Oman are set in Ogod *Bata* which is, in a sense, a separate settlement territorially but not politically within the boundaries of Ogod *Par*. It is doubtful whether a feud between these people would be long sustained.

[3] *Pagan Tribes of the Nilotic Sudan*, p. 46. The authors make no reference to the evidence from which these deductions were made. It must be remembered that Seligman supported the view that the king had absolute power. 'In the old days his word was law....' *The Cult of Nyakang and the Divine Kings of the Shilluk*, Welcome Report, 1911.

9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

There are also scattered references by Hofmayr, who writes:

When the number of dead and wounded is equal on both sides, they stop fighting; then the king will hold a Court and punish the party who is in the wrong. . . . In the case of mortal wounds, the penalty is an ox. In the case of deaths, ten head of cattle have to be paid and formerly a maiden instead of the cattle. This heavy fine is paid to the king who in return would give two or three oxen to the family of the deceased for the mourning dance.

Later, talking of the reign of *reth* Kur, he says:

Two villages, Bol and Pabur, were fighting over a beautiful maiden. There was much blood shed on both sides. The king went to Pabur and at night time he occupied the village. Next morning he sat in Court and took all the ornaments and cattle away from the village, even the clothes of the village. As he favoured Bol, he never did anything there.[1]

Westermann, whose information is least reliable, states that:

Murder cases were tried by a court of chiefs and the king. If a man was condemned, he was disgraced in many ways before the people. Sometimes he was led about the village with a cow-rope around his neck, and then executed by hanging. If a man was executed on account of a crime, his whole family and everything he possessed became the property of the king.

and also that:

In the case of certain infractions of the law the convict became the slave of the king, and could no more return to his home. These slaves are known as *tyen orok* (' men of crime ') or *adro* [' slaves ' of the Royal Household].

Apart from a description of a peace ceremony performed by the *reth* published by the Reverend D. S. Oyler, which will be discussed later, there are few references in published literature to homicide and the settlement of blood-feuds among the Shilluk. Naturally enough, administrative records contain frequent references to the subject because the Administration has been much concerned with the matter. Pumphrey, who was perhaps best qualified to weigh the evidence, unfortunately does not describe the procedures in detail nor record actual instances.

A full description of a peace ceremony between the warring settlements of Owaci and Thworo already mentioned was recorded in the Shilluk District files by Major G. W. Titherington in 1932. He writes as follows:

A peace ceremony was celebrated by the *reth* of the Shilluk between the sections of Owaci and Thworo on their traditional battle-ground on 2-3-32.

This feud is the most bitter and bloody of modern times and in about twenty years probably some fifty casualties have occurred in fighting and by retaliatory murder, and the numerous attempts to stop it have failed. Peace had been in the air since the Shilluk Chiefs' meeting in January, and, all preliminaries having been agreed to, the *reth* arrived to stay with the local Chief on February 29th. He saw all Chiefs and Headmen concerned on March 1st and and. He then went to Thworo where the Court Chief brought a guard of about one hundred spears. These were in formation and fully armed, but in undress and without shields. The four Thworo companies took about an hour and a half to get assembled. There were about five hundred men on parade and (by then) all fully equipped, drums and kudu horns were in full blast and everyone in a muck sweat and vast excitement. The *reth* addressed them briefly and they replied that they wanted peace. He got them on the move,

[1] Hofmayr, op. cit. [2] Westermann, *The Shilluk People*, 1912, p. xlvii.

9:Howell E-5 (1937-1950) 1952 FJ23 Shilluk FJ23

a basis for definite conclusions. It is, however, probably safe to say that among the Shilluk homicide is a private delict requiring the restoration of equilibrium by the payment of compensation in cattle. The main object of such payments is to marry a wife into the kinship group of the deceased—rather than individually to the name of the deceased—and thus ensure its continuity and increase, which have been interrupted by the removal of one of its members. Retaliatory sanctions are also operative, in that the duty to take vengeance on the person of the killer or one of his kinsmen is recognized.[1] In principle, there are here no profound differences between the Shilluk and their Nuer and Dinka neighbours. The rate of compensation is governed by the relationship between the parties and thus the offence is subject to social range. Patricide and fratricide, regarded as the gravest possible offences against the integrity of the kinship group, are subject only to supernatural sanctions. These apply within the local lineage in lessening degree according to the relationship between the persons concerned, and the ritual expiation is known in Shilluk as '*cuila ji kipo rwwo*'.

We cannot, however, entirely ignore the strong tradition which prevails among the Shilluk and the views of early writers, that the *reth*, as ultimate authority, had the recognized power to intervene, to enforce such payments and, moreover, to exact additional payments in person and kind amounting to fines which he seized for himself. If we are to believe these traditions, we must conclude that public action against warring factions, whose continued enmity was disturbing the peace of Shilluk society as a whole, was sometimes undertaken. This does not, in my opinion, alter the argument that individual acts of homicide were treated as private delicts involving primarily the restoration of equilibrium between the units of society concerned. If, however, the portions alleged to have been taken regularly by the Shilluk *reth* are regarded as 'fines' paid to the head of the State (though in my opinion this is a wrong interpretation), then homicide among the Shilluk appears to be in a transitional stage between a private and a public delict, and was so even prior to the introduction of penal sactions by the present Government.

[1] Pumphrey observes: 'It is interesting that where a compensatory payment for killing is due (in contrast to compensation for lesser wrongs) the net is cast wider and not only the lineage, but even members of other lineages of the same clan are expected to contribute.' Op. cit., p. 23.

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10: Rind E-4,5 (1955) 1955 FJ23 Shilluk FJ23

631

c) The Capital:

This is Fashoda where the king resides, and where the highest native court of appeal is held under the presidency of the king himself. [692]

The meaning of such a political organization is quite clear. The chief of every division is not selected or appointed by the king, but elected by the group concerned, and is formally invested by a dress from the king as a symbol of his authority. The basis of the Shilluk political system is lineage or clan, and has nothing to do with blood relationship to the royal family. 631 642

The present Shilluk country, it is said, is only a part of what was the Shillukland before. Just how far the Shilluk expansion did reach is controversial. My informants insisted on the fact that Nyikang reached the confluence of the White and the Blue Niles, and built a village there; and he sent messengers northwards to scout the area, but those messengers returned after reaching the site of the present Wadi Halfa (22° north latitude), informing Nyikang of the poverty of the area. After receiving this report, Nyikang did not consider another expedition, and returned to Akurua where he was last seen. This is quite clearly an exaggeration, because at that time the state of affairs in the central and northern Sudan was just beginning to take its present shape. Moreover, the Funj kingdom and the Arab state of Gerri were in their first phases of formation, i.e. politically and militarily strong enough, and on the watch against newcomers and adventurers. 173

What may have been the case is that probably the Shilluk, taking advantage of their capacity as good river-farers, descended the White Nile in their canoes. 174

Now the White Nile is an interesting water course from the geographical, geological and hydrological points of view. The life story of this river, though controversial, is an interesting one, but what concerns us here is that the river is very weak, shallow and broad, with many islands, many curves, studded with swamps on each side, full of grass vegetation, fords, an ill defined basin, and in the flood season the water inundates large stretches on both sides. Such a geographical environment provides an economically poor land, with no attraction to wealthy agricultural states. But, on the other hand, it provides a paradise for fishermen, refugees, and to a certain extent a good grazing and watering area for nomads during the dry season. Such a state of affairs is well described in the following quotation: 133

"Le Bahar el Abiad (the White Nile) arrose ce territoire, à divisé, soit par l'art, soit par la nature, en un nombre considérable de petits canaux, il forme autant de petites îles, sur chacune desquelles il y a un village ... Les habitans sont tous pêcheurs, à ont des canots avec lesquels ils remontent à descendent (le fleuve) ... " 22)

22) Brun, 448.

17: Pumphrey G-5 (1934-1938) 1941
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Thus of the present thirteen division chiefs only four hold traditional offices the others being government appointees over units based upon these rather vague confederacies. Though the four high chiefs do still possess an enhanced prestige their position is approximating rapidly to that of their less hallowed colleagues. This evolution to a more local form of government is a natural consequence of the inevitable lessening of the old autocratic power of the Rethship.

The impermanence of these confederacies is shown by a comparison between their composition in the Mahdia and their composition to-day (shown in Appendix IV), as also by the recent removal of the settlements of Mal and Abiangyei from Atodwoi Division to that of Detwok.

THE RETHSHIP.

The power of the *Raths* before Turkish interference was undoubtedly great. It was based partly on the semi-divinity with which tribal tradition clothes them and partly upon their great wealth in cattle and slaves. Justice was probably rough and large scale fighting more prevalent than litigation, such law suits as there were being seen, as previously mentioned, either by the settlement chief or by the *Rath* at Fashoda[19].

As well as wielding temporal power the *Rath* has always been the high priest of the tribal religion. Nyikang is mediator between God (*Juok*) and man, and each *Rath* is held to be a reincarnation of Nyikang. As high priest he has various obligations such as providing cattle for the sacred herds at Nyilual and Wau and providing a canoe for use at the shrine of Nyibodho (one of the Shilluk holy places).

Since the entry of the present Government the *Rath* has lost the means of acquiring wealth in cattle and is no longer allowed to have retainers of the traditional sort. He receives a substantial salary but this cannot purchase many cattle and his present comparative poverty has caused an inevitable decline in his temporal and spiritual prestige. The Rethship is living on its not inexhaustible store of divinity and the wonder is that the store has lasted so well.

19. The *Rath* is said to have had the enviable privilege of killing a tiresome litigant with a club.

17: Pumphrey G-5 (1934-1938) 1941
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The present status and functions of the thirteen Division Chiefs are the same. Each one presides over the court of his Division, and is responsible for the due payment of taxes and for sundry administrative affairs such as the clearing of roads. They have become an essential link in the administration and the feeling of "division-consciousness" is growing and needs to be fostered. The future effectiveness of the *Reth* depends much upon the strengthening of their position as his local representatives.

The Settlement Chief.

The Settlement Chief is traditionally directly responsible to the *Reth*, since the four intervening high chiefs used to act more as his High Sheriffs than as local potentates. In addition to the execution of the *Reth's* orders the Settlement Chief has always had certain semi-religious obligations such as the building of a house or two houses at Fashoda or the maintaining of the local shrine of Nyikang. The settling of disputes within the settlement has always been his duty and the modern tendency for him to be judicially short-circuited in favour of the Division Chief should be avoided as much as possible. He can and should relieve the Division Chief of much of his work. He should attend meetings of the court at least whenever any party to a case is from his settlement. He is responsible primarily to the Division Chief for public security, taxes and road work.

The settlement chief is selected by the lineage heads of the settlement and invested by the *Reth* who himself knots the *lau* over his shoulder. Those of Tonga alone are invested by the Division Chief.

The Village Headman.

The status of the village headman (*jal dwong pac*) varies in accordance with whether he is the headman of the principal village of a lineage (*Pac dwong*), in which case he is not only a village headman but also the representative of his lineage within the settlement, or the headman of a subsidiary village in which case he is a village headman pure and simple, the senior member of a group of homesteads. Headmen of principal villages often receive a *lau*, in some cases from a *Reth* direct

29:Dempsey M-5 (1940-1954) 1955
FJ23 Shilluk FJ23

Chapter VII

JUSTICE

A great part of the work of the king and his chiefs is the administration of justice. This is done under the supervision of the local British officials, and, of course, has been restricted in some ways. The former ruthless butchery and mutilation for petty offences is no longer tolerated, nor is the sentence of death and the execution of such a sentence permitted to them. Apart from this, however, it is the policy of the Sudan Government to encourage the various native peoples of the country to administer their own territory according to their age-long traditions and usages. And indeed, a harassed District or Assistant District Commissioner with only a handful of police to help him in administering an enormous area, being neither argus-eyed nor possessed of the power of being in several places at once, can attend personally only to a fraction of the cases that continually come up for attention. He will deal with the more serious criminal offences, but the majority of disputes and petty crimes among the Shilluk are heard and decided by the king and the district chiefs.

Whether justice as we understand it, the meting out to an individual exactly what is his due, is always done in these cases is another matter. To say, as is often said, that the African has a strong sense of justice and resents being treated unjustly, is not strictly true. He certainly resents being treated unjustly, but often he equally resents being treated justly when the judgment given is detrimental to himself. Hence, in a criminal case in which he is the accused, or in litigation with his neighbour, he will cheerfully swear to tell 'the truth, the whole truth,' meaning all the time 'and nothing like the truth.' Then he spins a most convincing tale which none of the listeners believes but cannot fail to

29:Dempsey M-5 (1940-1954) 1955
FJ23 Shilluk FJ23

and that one of the tins containing ninety piastres (about 18*s*.) had been stolen. The District Chief was called and held solemn court on the verandah of the house. He, however, could not discover the thief and therefore gave judgment that the owner of the box was responsible for the safety of the money entrusted to him and that he was to refund the missing money and to be held in custody until he did so. This seemed rather unfair on Henry, the owner of the box, since he had gained nothing from acting as banker to the rest, yet unless the thief was found there was nothing that we could do about the matter and it seemed to be closed. Two days later we were surprised to learn that one of the boys had owned up to the theft and had refunded the money. We were pleased, too, because we thought that although the boy had acted meanly in stealing his companion's savings, at least he had been man enough to come forward to save Henry from having to pay the penalty for the theft. We were speedily disillusioned as to his motive for confessing; the other boys knew perfectly well that Henry was innocent of taking the money, and they had a very strong idea who had. Accordingly they subscribed to buy a sheep which was given to the local witch doctor as a fee for finding the thief. The jal yath let it be known that he would sacrifice the sheep at a certain hour, and the moment the animal died so would the culprit; the latter had not the courage to defy the curse but promptly confessed his guilt.

When an animal is slain in sacrifice, great importance is attached to the position in which it falls. If the animal is a bull, it is not usually slain outright, but wounded by a spear thrust and allowed free. If it should wander towards the river or towards the shrine before it dies, that is taken as a sign that the sacrifice is acceptable to Nyikang. So, too, is it taken as a good omen if the beast in collapsing falls on its left side; if it should fall on its right side then the portents are unfavourable, and should it fall neither to right nor left but simply crumple up and fall forward with forefeet doubled beneath it, that would presage some terrible disaster. The actual spearing of the victim is generally done by

29:Dempsey M-5 (1940-1954) 1955
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586 she would be ignominiously bundled off home. The husband, like an indignant customer who has made an unsatisfactory purchase, would demand his dowry back. The girl's
[578] family would strenuously resist the claim and a long and acrimonious dispute would follow. The husband might
[692] attempt to recover his cattle by force, and eventually the case would be settled by the Reth's court; a compromise would be reached, judgment would be given for the plaintiff, but one or two cows would remain with the girl's family, and so would the unfortunate girl herself. Similarly, should the young bride die childless, the contract is deemed not to have been fulfilled, and the husband will demand that the bride wealth be returned to him. If the lady, faithless jade, should leave her lawful spouse for another man, the outraged husband does not leap up in righteous anger, seize his spear, pursue the erring couple and demand satisfaction of the seducer of his wife's affections, but he does make a bee-line for his father-in-law's kraal, and in the height of his wrath will demand not only the cattle, but also the sheep, spears and hoes and all the other little trinkets and knick-knacks with which he won the family's good graces during time of courtship. Father, anxious to keep the peace and the cattle,
[587] may offer his irate son-in-law another charming daughter, if he has one handy, as a substitute for the fickle one. But if such a useful article as a second daughter of marriageable age is lacking, or the husband, feeling that his matrimonial adventures in that particular family have gone far enough, should refuse the hand of the second lady, then father with a sigh will have to set about the difficult task of making his reluctant relatives give up their respective shares of the dowry and, at the same time, the equally difficult task of getting another dowry from his new son-in-law.

797 In Detwok a boy was being examined in the Catechism
587 prior to his baptism. The subject under discussion was the Sacraments and their division into those which may be received only once and those which may be repeated. All went well until the subject of Matrimony was reached. 'How often can a person receive the Sacrament of Matri-